



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

Draft Advisory Opinion No. 2023-3

June 9, 2023

Question Presented:

The petitioner, a state employee with the Department of Economic and Community Development, asks a series of questions about her proposed post-state employment with a Connecticut municipality, including whether General Statutes § 1-84b (f) bars her from accepting such employment.

Brief Answer:

Based on the facts presented, we conclude that the petitioner may accept post-state employment with the municipality without violating § 1-84b (f), but in engaging in such employment, she must abide by the other post-state employment provisions discussed below.

At its June 15, 2023 meeting, the Citizen’s Ethics Advisory Board granted the petition for an advisory opinion submitted by Christine Marques, a state employee with the Department of Economic and Community Development (“DECD”), and it now issues this advisory opinion under General Statutes § 1-81 (a) (3) of the Code of Ethics for Public Officials (“Code”).

Background

In her petition, Ms. Marques provides, in relevant part, as follows:

I’m writing to you to request a determination from the Citizen’s Ethics Advisory Board on post State employment. I am currently a State employee at the Department of Economic and Community Development (DECD). My position is non-regulatory, as I am supervisor in the engineering and construction unit (Office of Capital Projects - OCP). I am currently

contemplating leaving State employment to work full-time at a Connecticut municipality as their Director of Economic and Community Development. I am petitioning for advisory opinion for the following: CGS Sec. 1-84 b(f), 1-84b (b).

In OCP we administer projects that have already been awarded state bond funds in the form of Urban Act grants. The awarding agency is the Office of Policy and Management (OPM), with approval from the State Bond Commission. The Municipality that I would like to go work for was awarded two of these grants by OPM in the past year. Both were over \$50,000. Urban Act grantees work with their legislators to request these grants. I was not part of the decision-making process to award these two grants, and to the best of my knowledge neither was anyone at DECD. In the case of these Urban Act grants, the agency is unaware of the awards until a week prior to the State Bond Commission meeting when the agenda is released. OPM and the Governor's Office determine the agenda.

Once OPM and the State Bond Commission approved the two Urban Act grants, I prepared the DECD Financial Assistance Proposal for both in the past year. The Proposal is non-legally binding and a pre-approved form by the DECD Legal Department. I only fill in the Proposal form using the information provided. My role is strictly ministerial, and I have no discretion in the process. The Proposal is used to communicate to the Municipality the terms and conditions of the grant. These terms and conditions are statutory and agency policy requirements, all of which are public information. The Proposal is then used by DECD Outside Legal Counsel to prepare and close on the grant contract. The contract is prepared by Outside Legal Counsel using a template pre-approved by the DECD Legal Department and the Connecticut Office of the Attorney General. The contract is reviewed/approved by my manager, then reviewed/approved by our executive director, and then reviewed and signed by the DECD Commissioner. The DECD Commissioner is the only one at the agency with the authority to sign these contracts.

The third grant awarded to the Municipality in the past year was the Connecticut Community Challenge grant (CCC). This grant was awarded through a competitive application round, reviewed,

scored by a team, and selected by the DECD Commissioner. I was not a part of ANY of the application process. I was not asked my opinion, nor did I provide a recommendation for any of the grant awards. . . . I carried out the same Proposal process in the past year as above with the Urban Act, with the additional requirements stated in the Grant Award Letter provided by the DECD Commissioner to the municipality. My role is strictly ministerial, and I have no discretion in the process. I filled in the CCC Financial Assistance Proposal form using the information I was provided. The CCC Financial Assistance Proposal is a pre-approved form by management and DECD's Legal Department. DECD's Outside Legal Counsel prepared the contract for the CCC grant.

Any deviation from the pre-approved Proposal forms I fill out would require approval from my manager, executive director, and the DECD Commissioner. Not to mention, Outside Legal Counsel safeguards any deviations and would question it. . . .

Additional facts will be set forth as necessary.

Analysis

Starting with jurisdiction, persons generally subject to the Code are described as either "Public officials" or "State employees." The Code defines the latter to include (among others) "any employee in the executive . . . branch of state government, whether in the classified or unclassified service and whether full or part-time . . ." General Statutes § 1-79 (13). Ms. Marques is an employee of an executive-branch state agency, i.e., DECD, meaning she is a "State employee" and thus, upon leaving state service, will be subject to four of the Code's post-state employment provisions, General Statutes §§ 1-84a, 1-84b (a), 1-84b (b), and 1-84b (f).

The bulk of Ms. Marques's petition focuses on the last of those provisions, § 1-84b (f), the only one that could bar her from accepting employment with the municipality (and bar the municipality from employing her) upon leaving state service. Under § 1-84b (f), a former state employee may not—for one year after resigning from her state position—accept employment with a party to a state contract or agreement (other than the state) if two things hold true:

1. she participated substantially in, or supervised, the negotiation or award of the contract; and

2. it was signed within her last year of state service.

Section 1-84b (f) goes on to state that “[n]o party to such a contract or agreement other than the state shall employ any such former . . . state employee in violation of this subsection.”

Based on the facts above, Ms. Marques’s proposed post-state employer, the municipality, is a party to three state contracts (two involving Urban Act grants and one involving a CCC grant); the value of each of those contracts exceeds \$50,000; and DECD signed those contracts within the last year. Just one question, then, remains: Did Ms. Marques participate substantially in, or supervise, the negotiation or award of any of those contracts? Because the facts evince no supervisory role on Ms. Marques’s part, we need only address whether her “participation” in the negotiation or award of any one of those contracts was “substantial.”

As to what “substantial participation” means for purposes of § 1-84b (f), the regulations say this: “substantial participation shall be construed to mean participation that was *direct, extensive and substantive, not peripheral, clerical or ministerial.*” (Emphasis added.) Regs., Conn. State Agencies § 1-81-38 (a). The language there was taken directly from Advisory Opinion No. 86-9, which dates to § 1-84b (f)’s inception and provides as follows:

To be effective, subsection 1-84b(d) [now (f)] has to apply to public officials or State employees who have discretionary power to affect the terms of a State contract, or contract amendment, valued at \$50,000 or more. That includes those who have discretionary authority to establish contract specifications, for they could predetermine to whom a contract would eventually be awarded. Included also are those who review and make recommendations as to what bids should be considered, if the action is more than clerical or perfunctory, or accepted. Obviously included are the ones who negotiate the terms of a contract, or amendments to it.

In each case, the participation must be substantial. . . . In Webster’s Third New International Dictionary, at page 2280, “substantially” is defined as “in a substantial manner: so as to be substantial”. “Substantial”, in turn, is said to be synonymous with “material”, “real”, “true”, “important”, “essential”; “considerable in amount, value, or worth”, “of or relating to the main part of something”. . . .

While the facts of each case will determine whether the limitations of subsection 1-84b(d) [now (f)] apply, in the context of the subsection “substantial” means participation which is *direct, extensive, and substantive, not peripheral, clerical, or ministerial.*

(Citations omitted; emphasis added.)

That language was addressed in a 2003 informal opinion involving facts practically identical to those here. See Request for Advisory Opinion No. 3232 (2003). The issue there was whether § 1-84b (f) barred a DECD employee from accepting post-state employment with a municipality that had received a \$10 million legislative appropriation. After the Bond Commission had approved the funding, the DECD employee “assisted an outside attorney to draft the Assistance Agreement between the [municipality] and DECD” and “did nothing more than, in effect, fill in the necessary blanks with information that [he] had no role in generating.” That is, “the deal was presented to [him] as a completed package, and [his] responsibility was simply to make up the documents to reflect the pre-negotiated agreement,” acting “as a conduit for the paperwork necessary for a project that ha[d] been pre-negotiated and pre-approved by other parties.” The DECD employee asserted that his participation “in the process was ‘ministerial and peripheral’ and that therefore the one-year restriction of . . . § 1-84b (f) should not apply to [him].” Agreeing, the Commission attorney stated: “[I]f you exercised absolutely no discretion with regard to the contracts between the [municipality and DECD], but were merely acting as the scrivener filling in the blanks on a form with information supplied at a level above you, then the one-year restriction of . . . § 1-84b (f) does not apply to you.”

The facts before us warrant the same conclusion, for Ms. Marques’s participation—like that of the DECD employee above—was “ministerial,” a “word refer[ring] to a duty which is to be performed in a prescribed manner without the exercise of judgment or discretion.” (Internal quotation marks omitted.) *Durrant v. Board of Education*, 284 Conn. 91, 95 n. 4 (2007). Indeed, concerning each of the contracts at issue (the two involving Urban Act grants and the one involving a CCC grant), Ms. Marques’s role was confined to preparing the Financial Assistance Proposal, “a pre-approved [DECD] form” “used to communicate to the Municipality the [grant’s] terms and conditions,” which “are statutory and agency policy requirements, all of which are public information.” According to Ms. Marques, she had “no discretion in the process” and simply “fill[e]d in the Proposal form using the information provided” by her superiors. Based on those facts, we conclude that, as to the contracts at issue, she did not participate “substantially,” and that she may, to answer her question, accept employment with the municipality without violating § 1-84b (f).

Turning to Ms. Marques's other questions, two of those questions pertain to the three contracts just discussed (involving the Urban Act and CCC grants): that is, she asks whether the side-switching restriction in § 1-84b (a) extends to those matters; and if so, whether § 1-84b (a) will bar her from "discussing [those matters] at the Common Council, the Economic Development Commission, the Downtown Business Bureau, or any other public meetings[.]" The answer to both questions is no, for the same reason that § 1-84b (f)'s one-year restriction (discussed above) will not bar her employment with the municipality, namely, she did not participate "substantially" in those matters.

Under the side-switching restriction in § 1-84b (a), "[n]o former executive branch . . . state employee shall represent anyone other than the state, concerning any particular matter (1) *in which he participated personally and substantially while in state service*, and (2) in which the state has a substantial interest." (Emphasis added.) Concerning § 1-84b (a), the regulations define "substantial participation" precisely as they define it as regards § 1-84b (f): "For the purposes of Subsection (a) of Section 1-84b, substantial participation in a particular matter shall be construed to mean participation that was *direct, extensive and substantive, not peripheral, clerical or ministerial*." (Emphasis added.) Regs., Conn. State Agencies § 1-81-32. Because we already determined that, with respect to the contracts at issue, Ms. Marques's participation was ministerial and, hence, not "substantial," it follows that § 1-84b (a)'s restriction does not extend to those matters. And this means that § 1-84b (a) will not bar her from (as she puts it) "discussing [those matters] at the Common Council, the Economic Development Commission, the Downtown Business Bureau, or any other public meetings[.]"

Ms. Marques asks another question pertaining to § 1-84b (a), and given its length, it is worth repeating in full:

Am I precluded from working on the Community Investment Fund (CIF) projects on behalf of the Municipality? The CIF program is DECD's newest grant program for municipalities. Like CCC, this grant has a competitive application round, which is reviewed, scored, and the awards are determined by the CIF Board. I was not part of the application process. I did NOT review, score, or provide recommendations to award any of the CIF grant funds. I was also NOT assigned any of the CIF grants to administer or perform any ministerial tasks. I know nothing of this Municipality's CIF grant award except what was written in the newspapers. The Municipality did, however, request assistance regarding a municipally owned parcel's existing DEEP easement. I was not aware, nor informed by the Municipality at

the time of the request that the parcel was incorporated into the CIF grant scope. I contacted DEEP to find out if the Municipality should write the DEEP Commissioner or a specific DEEP unit. DEEP provided me with unsolicited feedback regarding the purposed engineering layout, which I in turn provided to the Municipality's Corporate Counsel. The DEEP feedback was part of the existing easement's requirements. I notified the Municipality's Corporate Counsel that I would not be able to assist any further and that the Municipality would have to contact DEEP directly.

For § 1-84b (a)'s side-switching restriction to be triggered as to DECD's CIF grant to the municipality, Ms. Marques's participation in the matter must have been "substantial"—i.e., "direct, extensive and substantive, not peripheral, clerical or ministerial." Regs., Conn. State Agencies § 1-81-32. Given that Ms. Marques had no role in the grant's negotiation or award, that she had no role in its administration, and that her *sole* connection to it was to have passed along information to the municipality from DEEP in response to the former's request for assistance concerning a parcel of land that was (though she was not informed at the time of the request) "incorporated into the CIF grant scope," we conclude that her participation in the matter was—if anything—"peripheral," not "substantial." Accordingly, § 1-84b (a) will not bar her from working on CIF projects on the municipality's behalf.

In her final question, Ms. Marques asks if she is "allowed to email, call, or meet with any DECD employee or representative *after the one year of Municipal service[.]*" (Emphasis added.) The short answer is yes, for the Code's cooling-off provision, § 1-84b (b), provides as follows: "No former executive branch . . . state employee shall, *for one year after leaving state service*, represent anyone, other than the state, for compensation before the department . . . in which he served at the time of his termination of service, concerning any matter in which the state has a substantial interest. . . ." (Emphasis added.) By the provision's plain language, then, once that year is up, Ms. Marques is free to represent the municipality before DECD, including, but not limited to, sending emails, making phone calls, and attending meetings (assuming, of course, that such representation does not violate either the already discussed side-switching provision or the soon-to-be discussed confidential-information provision).¹

¹Until that one year is up, however, Ms. Marques must not "represent" the municipality before DECD, meaning she must not engage in any activity that reveals her identity, including, for example, appearing in person, signing a document, or identifying herself on the telephone. See Advisory Opinion No. 86-11.

Before closing, we note that Ms. Marques will be subject to one additional post-state employment provision, General Statutes § 1-84a, under which she may never use “confidential information” gained in state service for anyone’s (including her post-state employer’s) financial gain. The term “Confidential information” is defined in § 1-79 (21) to include the following:

any information in the possession of the state, a state employee or a public official, whatever its form, which (A) is required not to be disclosed to the general public under any provision of the general statutes or federal law; or (B) falls within a category of permissibly nondisclosable information under the Freedom of Information Act, as defined in section 1-200, and which the appropriate agency, state employee or public official has decided not to disclose to the general public.

Further, it includes “not only information that has been recorded in some fashion (e.g., written or taped information), but also orally transmitted information (e.g., negotiations or conversations)” Regs., Conn. State Agencies § 1-81-15 (b).

Conclusion

Based on the facts presented, we conclude that Ms. Marques may accept post-state employment with the municipality without violating § 1-84b (f), but in engaging in such employment, she must abide by the three other post-state employment provisions discussed above.

By order of the Board,

Dated _____

Chairperson